

Wilmington Trust Co. v Magnani

2023 NY Slip Op 32837(U)

August 15, 2023

Supreme Court, New York County

Docket Number: Index No. 655298/2020

Judge: Andrea Masley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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WILMINGTON TRUST COMPANY, not in its individual capacity but solely as owner trustee; AVIATION CAPITAL GROUP LLC;	INDEX NO. <u>655298/2020</u>
Plaintiffs,	MOTION DATE _____
- v -	MOTION SEQ. NO. <u>004</u>
MIGUEL ALEMAN MAGNANI,	DECISION + ORDER ON MOTION
Defendant.	

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 140, 141, 142, 143, 144, 145, 151, 153, 154

were read on this motion to/for JUDGMENT - DEFAULT.

Upon the foregoing documents, it is

In motion seq. no. 004, plaintiffs move, pursuant to CPLR 3215, for a default judgment against defendant. This motion is unopposed.

This action seeks to recover on a guaranty under which defendant guaranteed the payment obligations of an airline under seven aircraft lease agreements and a Relevant Aircraft Purchase, Cancellation and Related Terms Agreement. (See NYSCEF 4-10, Leases; NYSCEF 11, Relevant Aircraft Purchase, Cancellation and Related Terms Agreement.) On October 14, 2020, plaintiffs commenced this action by summons and notice of motion for summary judgment in lieu of complaint. (NYSCEF 1, Summons; NYSCEF 2, Notice of Motion.) Defendant appeared and opposed that motion. (NYSCEF 21, Memo in Opp.) The court granted that motion, in part, with respect to defendant's liability and certain categories of damages amounting to

approximately \$11.8 million. (See NYSCEF 74, Decision and Order [mot. seq. no. 001]; NYSCEF 79, So Ordered Transcript; NYSCEF 84, Supplemental Decision and Order [corrected] [mot. seq. no. 001].) As to plaintiffs alleged \$68 million in damages, the court directed plaintiffs to file a complaint.¹ (NYSCEF 74, Decision and Order [mot. seq. no. 001].) In its supplemental decision and order, the court directed plaintiffs to submit a proposed judgment as to the approximately \$11.8 million in damages sought. (NYSCEF 84, Supplemental Decision and Order [corrected] [mot. seq. no. 001].) On October 20, 2020, a partial judgment was entered against defendant, awarding plaintiff Wilmington Trust Company \$4,136,273.85 and plaintiff Aviation Capital Group LLC \$7,682,678.23. (NYSCEF 92, Judgment.) The action continued as to the remaining damages sought.

On April 21, 2022, Fried, Frank, Harris, Shriver & Jacobson, defendant's counsel, filed a consent to change attorney in accordance with CPLR 321 (b) (1).² Defendant did not retain new counsel and did not register in NYSCEF as a pro se litigant. On June 14, 2022, the court held a conference on the record. In an abundance of caution, Fried Frank appeared and confirmed that it had properly withdrawn as counsel. (NYSCEF 100, Tr at 2:7-22.) Javier Mondragon was also present on behalf of the defendant; however, the court informed Mondragon that without a pro hac application or notice of

¹ Plaintiffs filed a complaint on July 27, 2021. (NYSCEF 77, Complaint.) Defendant filed an answer on August 26, 2021. (NYSCEF 83, Answer.)

² CPLR 321 (b) (1) provides “[u]nless the party is a person specified in section 1201, an attorney of record may be changed by filing with the clerk a consent to the change signed by the retiring attorney and signed and acknowledged by the party. Notice of such change of attorney shall be given to the attorneys for all parties in the action or, if a party appears without an attorney, to the party.”

appearance, the court would not recognize him as appearing counsel. (*Id.* at 4-5:3.)

The court found that defendant's failure to appear at this conference was his first default. (*Id.* at 6:2-10.)

On July 20, 2022, plaintiffs filed a motion to compel discovery. (NYSCEF 102, Notice of Motion.) The motion was granted in the absence of opposition. (NYSCEF 118, Decision and Order [mot. seq. no. 002].) The court directed defendant to comply with the court's preliminary conference order within 10 days or his answer would be stricken. (*Id.*) On October 7, 2022, the court issued a supplemental order based on defendant's noncompliance and struck his answer pursuant to CPLR 3126. (NYSCEF 123, Supplemental Decision and Order [mot. seq. no. 002].) Plaintiffs now seek a default judgment on the outstanding damages categories: (i) lost rent during the period the relevant aircraft were off-lease, together with prejudgment interest, and (ii) prejudgment interest on the amounts awarded in the October 2021 Judgment.

"A defaulting defendant is deemed to have admitted all the allegations in the complaint. An affidavit or verified complaint submitted in support of a motion pursuant to CPLR 3215 (f) for leave to enter a default judgment need only allege enough facts to determine whether a viable cause of action exists." (*HSBC Bank USA, N.A. v Simms*, 163 AD3d 930, 932-933 [2d Dept 2018] [citations omitted].) A plaintiff establishes its entitlement to a default judgment by submitting proof of service of the summons and complaint, proof of the facts constituting the cause of action against defendant, and evidence of the defendant's default. (*Id.* [citations omitted].)

Proof of Service

Plaintiffs have satisfied this element. (See NYSCEF 143, Aff of Service.)

Proof of Claim

Plaintiffs have submitted sufficient proof of the damages it incurred. Plaintiffs submit the affidavit of Jaime Crear, SVP, Chief Accounting Officer of plaintiff Aviation Capital Group LLC, who details the damages calculations, supported by the lease agreements. (NYSCEF 141, Crear aff; NYSCEF 4-10, Leases.)

Proof of Default

As previously stated, this court struck defendant's answer based on his repeated defaults.

Accordingly, it is

ORDERED that plaintiffs' motion for a default judgment is granted; and it is

ORDERED and ADJUDGED that plaintiff Wilmington Trust Company, not in its individual capacity but solely as owner trustee, at 1100 North Market Street, Wilmington, Delaware 19890, have judgment against defendant Miguel Alemán Magnani at c/o Captain Carlos Leon S/N, Zona Federal del Aeropuerto, Internacional Benito Juarez Ciudad de Mexico (AICM), in the principal amount of \$42,279,584.90, together with \$8,084,590.57 in prejudgment interest through March 20, 2023, as well as pre-judgment interest from March 20, 2023 to the date of judgment in the amount of

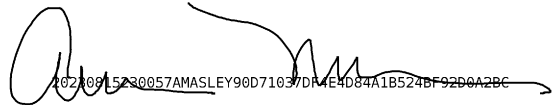
\$_____ at the statutory rate of 9%, for a total amount of

\$_____; and it is further

ORDERED and ADJUDGED that plaintiff Aviation Capital Group LLC at 840 Newport Center Drive, Suite 300, Newport Beach, CA 92660, have judgment against defendant Miguel Alemán Magnani Defendant Miguel Alemán

Magnani at c/o Captain Carlos Leon S/N, Zona Federal del Aeropuerto, Internacional Benito Juarez Ciudad de Mexico (AICM) in the amount of \$771,004.12; and it is further

ORDERED that plaintiffs shall have execution therefor.



8/15/2023

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE